

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #12	CCRB Case #: 201806609	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/03/2018 2:50 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 2/3/2020	EO SOL 2/3/2020	
Date/Time CV Reported Fri, 08/03/2018 7:25 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/13/2018 11:03 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jose Santory	05457	941398	PSA 7
2. POM John Olsen	16266	957920	PSA 7
3. POM Mike Suarez	05841	955540	PSA 7
4. POM Francisco Orellana	10999	954194	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jose Santory	Abuse: Sergeant Jose Santory stopped § 87(2)(b)	§ 87(2)(b)
B.POM John Olsen	Abuse: Police Officer John Olsen stopped § 87(2)(b)	§ 87(2)(b)
C.SGT Jose Santory	Abuse: Sergeant Jose Santory questioned § 87(2)(b)	§ 87(2)(b)
D.SGT Jose Santory	Abuse: Sergeant Jose Santory questioned § 87(2)(b)	§ 87(2)(b)
E.POM John Olsen	Abuse: Police Officer John Olsen frisked § 87(2)(b)	§ 87(2)(b)
F.POM John Olsen	Abuse: Police Officer John Olsen searched § 87(2)(b)	§ 87(2)(b)
G.SGT Jose Santory	Force: Sergeant Jose Santory used physical force against § 87(2)(b)	§ 87(2)(b)
H.POM John Olsen	Force: Police Officer John Olsen used physical force against § 87(2)(b)	§ 87(2)(b)
I.SGT Jose Santory	Abuse: Sergeant Jose Santory threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
J.POM Mike Suarez	Force: Police Officer Mike Suarez used physical force against § 87(2)(b)	§ 87(2)(b)
K.POM Francisco Orellana	Force: Police Officer Francisco Orellana used physical force against § 87(2)(b)	§ 87(2)(b)
L.POM Mike Suarez	Force: Police Officer Mike Suarez used pepper spray against § 87(2)(b)	§ 87(2)(b)
M.POM Mike Suarez	Discourtesy: Police Officer Mike Suarez spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Case Summary

On August 3, 2018, this complaint was submitted to the Internal Affairs Bureau (IAB) on behalf of § 87(2)(b) by Sergeant Jose Santory of PSA-7. It was received by the CCRB on August 13, 2018.

At approximately 2:50 p.m. on August 3, 2018, § 87(2)(b) was walking across the intersection next to § 87(2)(b) in the Bronx when he was stopped by Sergeant Jose Santory and Police Officer John Olsen of PSA-7 for allegedly jaywalking (**Allegation A: Abuse of Authority: § 87(2)(g)**) (**Allegation B: Abuse of Authority: § 87(2)(g)**). Sergeant Santory asked § 87(2)(b) if he was in possession of marijuana (**Allegation C: Abuse of Authority: § 87(2)(g)**). Sergeant Santory asked § 87(2)(b) if he was in possession of any weapons (**Allegation D: Abuse of Authority: § 87(2)(g)**). Police Officer Olsen frisked § 87(2)(b) (**Allegation E: Abuse of Authority: § 87(2)(g)**). Police Officer Olsen reached into § 87(2)(b)'s pocket (**Allegation F: Abuse of Authority: § 87(2)(g)**). § 87(2)(b) threw a napkin on the ground and Sergeant Santory stated that they were going to the precinct stationhouse. Sergeant Santory and Police Officer Olsen grappled with § 87(2)(b) to attempt to place him into handcuffs (**Allegation G: Force: § 87(2)(g)**) (**Allegation H: Force: § 87(2)(g)**). Sergeant Santory threatened to use a Taser on § 87(2)(b) (**Allegation I: Abuse of Authority: § 87(2)(g)**). Police Officer Mike Suarez and Police Officer Francisco Orellana of PSA-7 were driving by, exited their vehicle, and grappled with § 87(2)(b) to assist placing him in handcuffs (**Allegation J: Force: § 87(2)(g)**) (**Allegation K: Force: § 87(2)(g)**). Police Officer Suarez deployed O.C. spray in § 87(2)(b)'s face (**Allegation L: Force: § 87(2)(g)**). Police Officer Suarez told § 87(2)(b) "Don't be a little bitch," three times (**Allegation M: Discourtesy: § 87(2)(g)**). § 87(2)(b) was arrested for § 87(2)(b) (Board Review 01). He was transported to § 87(2)(b) and treated for wrist pain (Board Review 02).

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

The investigation obtained body-worn camera footage, and footage captured by Sergeant Santory and Police Officer Olsen depicted the FADO allegations (Board Review 04) (Board Review 05).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Jose Santory stopped § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer John Olsen stopped § 87(2)(b)

§ 87(2)(b) was interviewed at § 87(2)(b) in the Bronx on September 26, 2018 (Board Review 06).

§ 87(2)(b) stated that at approximately 2:50 p.m. on August 3, 2018, he crossed the street in front of § 87(2)(b). The crosswalk light was a blinking when an unmarked Chevrolet Impala cut into the intersection. The light turned red while § 87(2)(b) was in the crosswalk because the officers prevented him from getting across the street in time. Sergeant Santory and Police Officer Olsen exited the vehicle and Sergeant Santory told him that he could not jaywalk.

Sergeant Santory (Board Review 07) and Police Officer Olsen (Board Review 08) were interviewed at the CCRB on November 16, 2018.

Police Officer Olsen stated that although he did not recall having interacted with § 87(2)(b) before this incident, he recognized him immediately upon seeing him. He knew of § 87(2)(b) from previous investigations that had taken place in the area. He understood that § 87(2)(b) was a “known gang member” and a subject of a recent “Operation Cease Fire” initiative.

§ 87(2)(e)

§ 87(2)(b) This incident was not a form of cease-fire enforcement, but § 87(2)(b) § 87(2)(b)'s relationship to the program impacted Police Officer Olsen's general decision making during their interaction. Police Officer Olsen stated that he observed § 87(2)(b) walking against a solid “do-not-walk” sign and was consequently jaywalking. In response to seeing this, he pulled the police vehicle next to § 87(2)(b) got out, and began to speak to him. It was Police Officer Olsen's intention to speak to § 87(2)(b) and possibly write him a summons for jaywalking.

Sergeant Santory stated that he was aware of § 87(2)(b) § 87(2)(b)'s possible involvement in a shooting or robbery because his photograph had been shown § 87(2)(b)

§ 87(2)(b) was shot at § 87(2)(b) where § 87(2)(b) lived. Sergeant Santory did not know exactly what § 87(2)(b) § 87(2)(b)'s involvement in this incident was. Four individuals were involved, § 87(2)(b)

§ 87(2)(b) § 87(2)(b) was also a “Cease Fire” enforcement subject, but that enforcement was not in effect during this interaction. § 87(2)(e)

Sergeant Santory stated that he observed § 87(2)(b) walking in the crosswalk in front of the police vehicle. However, as § 87(2)(b) walked in the crosswalk, the hand signal turned from a blinking red to solid red hand signal.

The body-worn camera footage from Sergeant Santory (Board Review 04) and Police Officer Olsen (Board Review 05) showed that § 87(2)(b) walked across the street in front of the officers. He appeared to be inside the confines of a crosswalk. However, the footage did not capture if § 87(2)(b) walked with or against the traffic light.

§ 87(2)(b) was issued two summonses in this case (Board Review 22) for jaywalking and littering, respectively. A request for the disposition of those summonses has been submitted to the NYPD and will be added to the case file upon receipt.

§ 87(2)(g)

Allegation C – Abuse of Authority: Sergeant Jose Santory questioned § 87(2)(b)

§ 87(2)(b) alleged that after he was stopped, Sergeant Santory asked, “Are you sure you don’t have marijuana on you this time?”

Sergeant Santory stated that he asked § 87(2)(b) if he was in possession of any marijuana because during another interaction several weeks before, § 87(2)(b) had volunteered that he had been in possession of marijuana, and had consequently been written a summons for possession of marijuana. Sergeant Santory did not remember any other reason he had for asking § 87(2)(b) if he was in possession of marijuana. He did not remember smelling any marijuana on § 87(2)(b)’s person.

Forty-eight seconds into Sergeant Santory’s body-worn camera footage (Board Review 04), Police Officer Olsen asks § 87(2)(b) for his identification. Then Sergeant Santory asks § 87(2)(b) “You got any weed on you. Like you did last time? Anything else on you?”

According to People v. De Bour, 40 N.Y.2d 210 (Board Review 09), under the common-law right to inquire, an officer can request explanatory information when there is some objective credible reason to do and “a founded suspicion that criminal activity is afoot.”

§ 87(2)(g)

Allegation D – Abuse of Authority: Sergeant Jose Santory questioned § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer John Olsen frisked § 87(2)(b)

§ 87(2)(b) alleged that as an officer asked him whether he was in possession of marijuana, the same officer patted his pants pockets.

As stated above, Sergeant Santory stated that he was aware of § 87(2)(b)’s possible involvement in a shooting or robbery § 87(2)(b)

In that incident, § 87(2)(b)

§ 87(2)(b) was shot at § 87(2)(b) where § 87(2)(b) lived. Sergeant Santory did not know exactly what § 87(2)(b)'s involvement in this incident was. Four individuals were involved, § 87(2)(b) was also a "Cease Fire" enforcement subject, but that enforcement was not in effect during this interaction. § 87(2)(e)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

As stated above, Police Officer Olsen stated that although he did not recall having interacted with § 87(2)(b) before this incident, he recognized him immediately upon seeing him. He knew of § 87(2)(b) from previous investigations that had taken place in the area. He understood that § 87(2)(b) was a "known gang member" and a subject of a recent "Operation Cease Fire" initiative. § 87(2)(e)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) This incident was not a form of cease-fire enforcement, but § 87(2)(b)'s relationship to the program impacted Police Officer Olsen's general decision making during their interaction.

Police Officer Olsen had also been informed by officers at the precinct stationhouse that § 87(2)(b) was visible in surveillance footage that captured an armed robbery. Police Officer Olsen had been informed that an I-card with probable cause had not been issued because the officers were going to refrain from arresting him until they "had a full case put together." That said, they "basically knew it was § 87(2)(b) who had committed the robbery. After § 87(2)(b) was stopped, Police Officer Olsen observed that § 87(2)(b) was wearing the exact same pants with the exact same knot as he had when he was captured on video during the alleged robbery. The way in which § 87(2)(b)'s strings were tied was "odd" and "easily recognizable."

Police Officer Olsen stated that he patted down § 87(2)(b)'s waistband and pockets because, based on § 87(2)(b)'s criminal history and the fact that he was allegedly involved in a recent armed robbery, he believed § 87(2)(b) may have been armed. He asked § 87(2)(b) if he could "check" him. In response, § 87(2)(b) gestured up with his hands, nodded, and said, "Go ahead," or something to that effect. Police Officer Olsen interpreted this as consent.

Fifty-four seconds into Sergeant Santory's body-worn camera footage (Board Review 04), he asks whether § 87(2)(b) has any marijuana, Police Officer Olsen asks, "Do you have anything on you that can hurt me?" § 87(2)(b) shakes his head as if to indicate, 'No.' Sergeant Santory asks, "You have any weapons?" Police Officer Olsen asks, "You don't mind if I check?" § 87(2)(b) raises his hands and says, "Go ahead."

According to the I.S.A.R. (Board Review 10) that was completed by Captain Jerome Bacchi of PSA-7, § 87(2)(b) was "...a known Jackboyz crew member and suspect in a gunpoint robbery from 08/01/2018."

As stated above, according to People v. De Bour, 40 N.Y.2d 210 (Board Review 09), under the common-law right to inquire, an officer can request explanatory information when there is some objective credible reason to do and "a founded suspicion that criminal activity is afoot."

According to Terry v. Ohio, 392 U.S. 1 (Board Review 11), an officer may frisk an individual when, after a stop, he reasonably believes that the suspect is armed.

§ 87(2)(g)
[REDACTED]

Allegation F – Abuse of Authority: Police Officer John Olsen searched § 87(2)(b)

§ 87(2)(b) did not allege that Police Officer Olsen searched him.

However, one minute and eighteen seconds into Sergeant Santory's body-worn camera footage (Board Review 04), after frisking § 87(2)(b) Police Officer Olsen appears to reach into § 87(2)(b)'s right pocket. § 87(2)(b) says, "You're going inside my pocket." Police Officer Olsen replies, "You just told me I could." § 87(2)(b) replies, "I didn't. I said, 'Don't break my Backwoods [cigar].'"

Fifty-six seconds into Police Officer Olsen's body-worn camera footage (Board Review 05), after Sergeant Santory asks, "You have any weapons?" Police Officer Olsen asks, "You don't mind if I check?" § 87(2)(b) raises his hands and says something unclear that might be, "Go 'head." Sergeant Santory says, "Perfect." Police Officer Olsen appears to feel § 87(2)(b)'s right pocket. He turns a small object between his thumb and forefinger. § 87(2)(b) says, "Don't break my Backwoods [cigar]." Police Officer Olsen indicates that he did not hear what § 87(2)(b) said. § 87(2)(b) says, "You're going inside of my pocket." Police Officer Olsen asks, "What's up?" § 87(2)(b) says, "You're going inside of my pocket." Police Officer Olsen says, "You just told me I could." § 87(2)(b) replies, "I didn't. I said don't break my Backwoods [cigar]." Police Officer Olsen replies, "Okay." Police Officer Olsen says to Sergeant Santory, "He's got a Backwoods [cigar]."

Police Officer Olsen stated that he asked § 87(2)(b) if he could "check" him. In response, § 87(2)(b) gestured up with his hands, nodded, and said, "Go ahead," or something to that effect. Police Officer Olsen understood this to mean that he was permitted to search § 87(2)(b)'s person, including his pockets. He only would have put his hands into § 87(2)(b)'s pockets if he felt something that he believed could have hurt him or if § 87(2)(b) had hinted that there was

something in his pocket. He did not recall if § 87(2)(b) hinted that there was something in his pocket. Police Officer Olsen was unable to recall anything else about what happened. He did not recall if he felt anything in § 87(2)(b)'s pockets. He did not recall taking anything out of § 87(2)(b)'s pockets. He added that based on his training and experience, he would not have searched for drugs and only have frisked for weapons.

As stated above, according to Terry v. Ohio, 392 U.S. 1 (Board Review 11), an officer may frisk an individual when, after a stop, he reasonably believes that the suspect is armed.

In People v. Johnson, 277 A.D.2d 875 (Board Review 12), the court found that an officer was not justified in reaching into a man's pocket to obtain drugs because the officer lacked particularized suspicion or any grounds to fear for his safety or that of his fellow officers.

According to People v. Cobb, 208 A.D.2d 453 (Board Review 13), the narrow scope of the intrusion authorized during a protective pat-down may not exceed what is necessary to ascertaining the presence of weapons.

In Minn. v. Dickerson, 508 U.S. 366 (Board Review 14), the court determined that "the officer's continued exploration of respondent's pockets after having concluded that it contained no weapon" was impermissible.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation G – Force: Sergeant Jose Santory used physical force against § 87(2)(b)

Allegation H – Force: Police Officer John Olsen used physical force against § 87(2)(b)

Allegation I – Abuse of Authority: Sergeant Jose Santory threatened § 87(2)(b) with the use of force.

Allegation J – Abuse of Authority: Police Officer Mike Suarez used physical force against

§ 87(2)(b)

Allegation K – Force: Police Officer Mike Suarez used physical force against § 87(2)(b)

Allegation L – Force: Police Officer Francisco Orellana used pepper spray against § 87(2)(b)

§ 87(2)(b) alleged that when he threw a napkin onto the ground, Sergeant Santory and Police Officer Olsen grabbed his forearms and informed him that they were taking him to the precinct stationhouse. At least two additional officers grabbed § 87(2)(b) attempting to place his hands behind his back. § 87(2)(b) locked his arms by pressing his fists into his hips and holding his elbows outward, attempting to prevent from being handcuffed. An officer, identified by the investigation as Police Officer Suarez, placed a nightstick so that it was leveraged against § 87(2)(b)'s right forearm and his right bicep, and then twisted the nightstick so that § 87(2)(b)'s arm twisted as well. § 87(2)(b)'s arm hurt so much that he stopped holding it in place. An officer behind him pulled his right hand behind his back. § 87(2)(b) turned his head to the right and was sprayed with pepper spray one time, directly in the face. § 87(2)(b) released his arms, was placed in handcuffs, and taken to the police vehicle.

The body-worn camera footage of Sergeant Santory (Board Review 04) and Police Officer Olsen (Board Review 05), the statements of Sergeant Santory, Police Officer Olsen, Police Officer Suarez, and Police Officer Orellana, and the associated T.R.I.s (Board Review 22) were consistent with § 87(2)(b)'s account of these allegations. All of the officers accounted for physically restraining § 87(2)(b) and grabbing his arms in order to place him into handcuffs.

Police Officer Suarez stated that he physically restrained § 87(2)(b) and deployed the O.C. spray because he wanted to gain control of § 87(2)(b) so that he could be placed under arrest, because he was resisting arrest.

Sergeant Santory said, “You’re gonna get Tased, § 87(2)(b) You’re gonna get Tased.” Sergeant Santory said this because § 87(2)(b) knew that the officers were trying to place him in handcuffs and he was “actively resisting” them. Sergeant Santory believed that if Police Officer Suarez had not used the O.C. spray the situation would have become “progressively worse.”

According to the I.S.A.R. (Board Review 10), which was completed by Captain Jerome Bacchi of PSA-7, the officers acted properly and within the scope of their employment by using the minimum force necessary to take a resisting subject into custody.

According to Patrol Guide Procedure 221-01 (Board Review 15), officers may use reasonable force to ensure the safety of a member of service or when it is reasonable to place a person in

custody. Officers may only use the reasonable force necessary to gain control or custody of a subject. In determining whether use of force is reasonable, officers should consider whether the subject is actively resisting custody.

According to New York Penal Law §205.30 (Board Review 16), a person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer from effecting an authorized arrest of himself or another person.

§ 87(2)(g)

Allegation M – Discourtesy: Police Officer Mike Suarez spoke discourteously to § 87(2)(b)

Both Sergeant Santory’s body-worn camera (four minutes into the video) and Police Officer Olsen’s body-worn camera (four minutes into the video) captured an officer say, “Stop being a little bitch,” to § 87(2)(b) three times after he yelled in response to having O.C. pepper spray deployed into his eyes. It is apparent from the recordings that neither Sergeant Santory nor Police Officer Olsen made this statement. However, it is also apparent that this statement came from either Police Officer Suarez or Police Officer Orellana, who were the only two other individuals next to § 87(2)(b)

During his CCRB interview, Sergeant Santory was presented with his own body-worn footage and after listening to it, he acknowledged hearing an individual say, “Stop being a little bitch.” Sergeant Santory denied making this statement. During his CCRB interview, Police Officer Olsen was presented his body-worn camera footage and acknowledged that an officer said, “Stop being a little bitch.” Police Officer Olsen denied saying this. He did not know who said it. He was unaware that anyone had said this until it was pointed out to him during his CCRB interview. During his CCRB interview, Police Officer Orellana was presented with Sergeant Santory’s body-worn camera footage from this incident. Police Officer Orellana and his representative both acknowledged that an individual said, “Stop being a little bitch.” Police Officer Orellana denied saying this and did not know who said it. He did not recall an officer saying that. He did not hear it during the incident.

During his CCRB interview, Police Officer Suarez was presented with Sergeant Santory’s body-worn camera footage. He acknowledged hearing an officer saying, “Stop being a little bitch.” He added that although he heard it he did not know if it was an officer. He remembered that there were people on the sidewalk. Police Officer Suarez denied making this statement and did not know who said it. Police Officer Suarez added that there were six to ten civilians on the street at

the time standing ten to fifteen feet away. It was Police Officer Suarez's understanding that one of these individuals may have been someone who said, "Stop being a little bitch." He never interacted with any of those civilians.

The body-worn camera footage clearly shows that the civilians who were gathered to watch this incident were at least twenty feet away. Nothing they said appeared to be audio recorded and captured by the body-worn camera footage. In addition, the person who says, "Stop being a little bitch" is not speaking in an especially loud tone of voice.

The investigation created an audio file (Board Review 17) contrasting the voices of Police Officer Suarez and Police Officer Orellana with the voice of the unknown officer who said, "Stop being a little bitch." The audio recording demonstrates that the statement, "Stop being a little bitch," was made by Police Officer Suarez, whose voice matches the tone of the voice captured by the body-worn camera footage. In addition, Police Officer Orellana has a discernible Hispanic accent,

§ 87(2)(g)

According to Patrol Guide Procedure 203-10 (Board Review 18), officers are prohibited from using discourteous or disrespectful remarks.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 19).
- Sergeant Santory has been a member-of-service for twelve years and has been a subject of ten CCRB complaints and thirty-five allegations, two of which have been substantiated.
 - In Case #201116462, an allegation of offensive language was substantiated against then-Police Officer Santory with the recommended discipline of Instructions. The NYPD did not issue a penalty in this case.
 - In Case #201504669, a frisk allegation was substantiated against Sergeant Santory with the recommended discipline of Command Discipline A. The NYPD concurred with the CCRB's disciplinary recommendation in this case.
- Police Officer Olsen has been a member-of-service for four years and has been a subject of five CCRB complaints and ten allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Orellana has been a member-of-service for six years and has been a subject of one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

- Police Officer Suarez has been a member-of-service for five years and has been a subject of one CCRB complaint and two allegations. The one complaint is presently pending investigation. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) was arrested.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- According to the New York City Comptroller's Office, as of January 22, 2019, no Notice of Claim has been filed in this case (Board Review 21).

Squad 12

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date